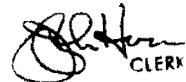


FILED

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Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

* * * * *

UNITED STATES OF AMERICA,

CR.10-40047

*

Plaintiff,

MEMORANDUM OPINION AND
ORDER RE: FORFEITURE MOTION

*

- VS -

*

GUILLERMO ORTIZ, a/k/a "Memo,"

*

*

Defendant.

*

* * * * *

Defendant Guillermo Ortiz filed a Motion claiming interest to \$4,100 that Ortiz contends was not properly taken from his residence. Doc. 105. The Court then ordered the United States Attorney's Office to respond to the motion. After the response was filed Ortiz filed a reply, then later filed a supplement. Doc. 110, 111. For the reasons stated in this memorandum the Court is denying Ortiz the relief requested in his motion and supplement.

DISCUSSION

On April 12, 2010, a warrant was issued by a United States Magistrate Judge to search property located at 901 N. Cliff Avenue in Sioux Falls, SD. The warrant, which was executed on April 13, 2010, authorized the search and seizure of a number of items, including United States currency. \$4,100 in cash was seized from the property.

That \$4,100 was subject to forfeiture to the State of South Dakota under S.D.C.L § 34-20B-70(6), which provides that "Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;" are subject to forfeiture and that no property right exists in them. The State of South Dakota moved on its forfeiture action regarding the money and Ortiz was served with a copy of the Summons and Complaint on May 20, 2010, but failed to answer the Summons and Complaint or make any appearance of any kind. Default judgment was then rendered against Ortiz on June 24, 2010.

Ortiz' motion and supplement contain numerous inaccurate and irrelevant factual allegations. In addition, Ortiz' reliance on 18 U.S.C. § 853(n)(2) is misplaced. Ortiz' property was forfeited in state court under South Dakota law, not under 18 U.S.C. § 853. Also, § 853(n)(2) allows for "any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States" to petition to have their claim adjudicated by the court. The plain language of the statute itself does not allow Ortiz to petition for relief from the forfeiture and Ortiz has failed to assert a legal basis to challenge the forfeiture in federal court. Ortiz cannot challenge a state court forfeiture decision in a federal district court because the district court lacks subject-matter jurisdiction to make such a review under the Rooker-Feldman doctrine, *See Campbell v. Spencer*, 682 F.3d 1278 (10th Cir. 2012).

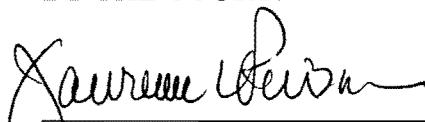
The Court has considered Ortiz' request for an evidentiary hearing, but finds that such a hearing is not warranted under the facts of this case. Accordingly,

IT IS HEREBY ORDERED:

1. That the relief requested in the forfeiture motion (Doc. 105) and in the Supplement (Doc. 111) is denied;
2. That the request for an evidentiary hearing is denied; and
3. That a Certificate of Appealability is denied.

Dated this 21st day of November, 2014.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Deb Hester
Deputy